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OFFICE OF PETITIONS

In re Application of :
Heckenmuller et al. :
Application No. 09/646,140 : DECISION ON PETITION
Filed: May 10, 2002 :
Atty Docket No. 06275-218001 :

This is a decision on the "PETITION TO REVIVE APPLICATION UNDER 37 CFR § 1.137(b)," filed April 5, 2004. This decision is made in light of the "REQUEST TO WITHDRAW PETITION TO REVIVE AND PETITION FOR REFUND," filed October 18, 2004.

The petition to revive is DISMISSED AS MOOT.

The request for refund of petition fee is GRANTED.

A review of the above-identified application reveals that the Office has not, in fact, held the application to be abandoned. A response to the final Office action mailed September 30, 2003 was timely filed on March 22, 2004. As of the filing of the petition, the Office had not made a determination as to whether the response was sufficient to place the application in condition for allowance. Accordingly, the application was referred back to the Technology Center for review of the response. It appears that the response filed March 22, 2004 was sufficient to place the application in condition for allowance. Thus, consideration of the petition to revive under § 1.137(b) was not, and need not be, undertaken.

Under the circumstances of this case, it is appropriate to dismiss the petition to revive as moot and refund the petition fee. The \$1330 petition fee has been refunded to Deposit Account No. 06-1050, as authorized.

However, the \$330 Notice of Appeal fee will not be refunded. As set forth in 37 CFR 1.26(a), a change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3219.


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